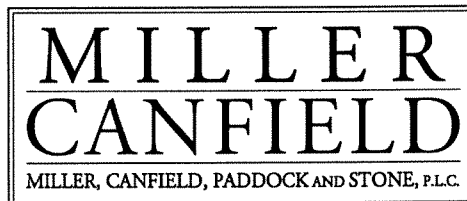


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September 20, 2002

01-33

Clerk of the Court
Supreme Court of Michigan
P. O. Box 30052
Lansing, MI 48909

Re: Proposed Amendments of Rules 2.401, 2.410, of the Michigan Court Rules

Dear Clerk:

We are writing this letter on behalf of the Washtenaw County Bar Association ADR Section.

We strongly urge that the Michigan Supreme Court reconsider its position regarding the proposed amendments to the ADR rules that require *participation in good faith* in the mediation process. We concur with the remarks of Robert E. Lee Wright in his letter to the Court dated September 16th, 2002 that the requirement and enforcement of good faith participation would have a chilling affect upon the confidentiality of the mediation process which was guaranteed by the rule. We are very concerned that in order to enforce the good faith requirement, a party or a mediator may be required to disclose statements made during the course of settlement discussions which were intended to be confidential.

The requirement of *good faith participation* is inconsistent with a party's right of self-determination, a fundamental principle underlying the mediation process. A party has the exclusive right to decide whether or not to negotiate a settlement of a claim, no matter how unreasonable the exercise of that right might appear. The principle of self-determination is compromised if the amendment imposes upon a party the obligation to negotiate in good faith.

Finally, the Supreme Court appointed a Task Force, which issued its report in January of 1999, and its addendum report in January 2000. The Task Force did consider



Clerk of the Court

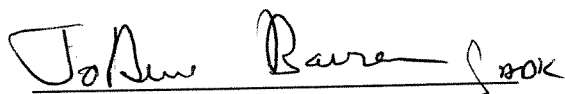
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September 20, 2002

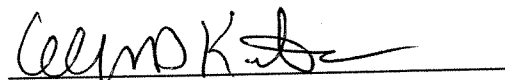
but did not include a requirement of good faith participation for the reasons stated above. We would urge the Court, before adopting these proposed amendments, to reconvene the Task Force so that it could address this issue and make its recommendations to the Court.

We thank you for your consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "JoAnne Barron".

JoAnne Barron, Chair
Washtenaw County ADR Section

A handwritten signature in cursive script, appearing to read "Allyn D. Kantor".

Allyn D. Kantor
Past Chair